IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1508 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NILESHBHAI NAGJIBHAI AHIR
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for Petitioner.
SERVED BY RPAD - (R) for Respondent Nos. 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.
MR M.IQBAL SHAIKH for MR JITENDRA MALKAN, Asst. Solicitor General for Respondent No. 4.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (“PBM Act” for short), has

challenged his detention order on various grounds.

By an order dated 18-1-2006, the petitioner is detained under provisions of the aforesaid Act. With the detention order, the petitioner is also served with the ground of detention. In the grounds of detention, it is alleged that the petitioner was dealing in blue kerosene for which he was not having any license and he was not entitled to retain the same. The petitioner was intercepted when he was transporting the aforesaid blue kerosene in his motor tempo on 2-12-2005. It is alleged that from motor tempo of the petitioner 24 barrels were found having blue kerosene. It is alleged that the petitioner has violated the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The detaining authority after being subjectively satisfied, detained the petitioner by passing detention order.

Mr.Prajapati, learned advocate for the petitioner submitted that there is a delay in deciding the representation of the petitioner at the hand of the Central Government, as the petitioner has made a representation on 31st January, 2006, which was decided on 23rd February, 2006. He further submitted that on this ground, the order of detention passed against the petitioner is required to be quashed. In support of his say, Mr.Prajapati has relied upon the decision of the Supreme Court in **Rajammal Vs. State of Tamil Nadu and Another,** reported in **AIR 1999 SC 684**, wherein it is held as under in paragraphs 9 and 10 :

> "9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not

enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

10. What happened in this case was that the Government which received remarks from different authority submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

Mr.Shaikh, learned Counsel appearing for Central Government submitted that the Central Government received the representation of the petitioner on 10th February, 2006 through the office of District Magistrate, Navsari and after considering the representation along with the reports and grounds of detention and other relevant records, representation of the petitioner was rejected on 23rd February, 2006 and in between, there were four holidays.

It is required to be considered that the representation of the petitioner was received on 10th February, 2006 and the decision is taken after about 13 days and even if the holidays are to be excluded, then also there is a delay of about nine days, which is not explained properly. Since the delay in deciding representation is not explained properly, only on this ground of delay in deciding representation at the hand of the

Central Government, this petition is required to be allowed.

Considering the aforesaid aspect of the matter, this petition is allowed. Order of detention dated 18-1-2006 is quashed and set aside. Petitioner – Shri Nileshbhai Nagjibhai Ahir is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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